

CHAPTER 4

OTHER ISSUES

Staged Approach to Sale

4.1 The *Telstra (Transition to Full Private Ownership) Bill 1998* provides that up to 49.9 per cent of the government's equity in Telstra may be sold when this legislation receives Royal Assent. It requires the Commonwealth to retain a 50.1 per cent share.

4.2 Schedule 3 of the *Telstra (Transition to Full Private Ownership) Bill 1998* sets out the conditions that must be met for the Commonwealth to sell more than 50 per cent of its original equity interest in Telstra. Part 2 of Schedule 3 contains provisions that repeal the provisions in Division 2 of Part 2 of the *Telstra Corporation Act 1991* (which require the Commonwealth to retain two-thirds of the equity in Telstra).

4.3 In brief, the Bill provides for the Minister to arrange for an independent inquiry into whether Telstra has met certain prescribed performance criteria in relation to customer service. Telstra would need to meet those criteria for a particular designated period (of at least 6 months). If the person or body conducting the inquiry finds that Telstra has met the prescribed criteria for the designated period, it must issue a written certificate to that effect and give it to the Minister. The certificate must be published in the Gazette and it must be tabled in both Houses of Parliament. The day on which the certificate is published in the Gazette becomes the *inquiry certificate day* and is the day from which the Commonwealth will be able to sell its remaining 50.1 per cent equity in Telstra.

4.4 The Explanatory Memorandum to the Bill states that:

Subitem 2 (1) (of Schedule 3) empowers the Minister for Communications, Information Technology and the Arts to arrange for an independent inquiry to be established into whether Telstra has met certain prescribed performance criteria for a particular designated period. The role of the inquiry would be to assess Telstra's performance against criteria set out in the regulations relating to service levels to customers in metropolitan, rural and remote areas.

Subitem 2(10) provides that for the purposes of item 2, the 'prescribed criteria' are the criteria specified in the regulations.¹

1 *Telstra (Transition to Full Private Ownership) Bill 1998*, Explanatory Memorandum, p.45

The pre-sale inquiry

4.5 The Committee noted the comments of the representatives of the telecommunications industry that any inquiry preceding the full sale of Telstra (that is the government's remaining 50.1 per cent share in the company) should be conducted openly and in a manner that allows for submissions from interested parties. ATUG's Alan Horsley told the Committee:

We would (be expecting to make a submission) and I think we would see far better that the public inquiry process and the openness be followed. We see that as to some degree a characteristic of this industry since about 1988—a very open approach to legislative development and issues resolution, and we think that it would be reasonable to apply to this as well.²

4.6 His stance was supported by Telstra's competitors. Mr Meagher from Optus told the Committee:

Like Mr Horsley, the previous witness, we think public inquiries are more beneficial than private inquiries and we also believe that, essentially, the whole of the telecommunications regime as it has developed since I think Senator Evans was minister-initiated in 1988—has been one of openness. That has actually been beneficial.³

4.7 The Committee notes that in its submission Optus suggested that the pre-sale inquiry should include an assessment of effective competition, including matters such as:

- i) The extent to which Telstra has complied, or failed to comply, with the competition rule in Part XIB;
- ii) whether Telstra has met its costs disclosure obligations under the Amendment Bill;
- iii) whether there is effective access to services declared under Part XIC and
- iv) other indicators of competition such as, the availability of local number portability, preselection on a range of services and other non-price barriers to entry into the market.⁴

4.8 Optus's call for an assessment of effective competition before the final sale was supported by Mr Havyatt of Hutchison Telecommunications.⁵ The Committee was concerned that there appeared to be some confusion on the part of certain witnesses between the issues of ownership of Telstra and the competitive regime. The

2 Mr Horsley, Evidence, p. 6

3 Mr Meagher, Evidence, p. 14

4 Submission no. 18 p. 4 (C&W Optus)

5 Mr Havyatt, Evidence, p.21

Committee wishes to stress that the two issues are separate and should not be confused.

4.9 The Committee notes that nothing in the legislation would prevent the pre-sale inquiry from being a public process where interested parties would be able to put their views. The Committee is not convinced that the inquiry should look into issues of competitiveness. However other means of improving the competitive regime should not be ignored. Accordingly,

Recommendation 4

The Committee recommends that the government seek advice from the ACCC on any procedural changes it would recommend to improve the effectiveness of the competitive regime.

Prescribed Criteria

4.10 The Explanatory Memorandum (EM) to the *Telstra (Transition to Full Private Ownership) Bill 1998* states that:

The provisions for an inquiry and for Telstra to meet certain performance criteria on quality of service need to set meaningful thresholds for performance that will provide assurance that acceptable standards of service will be achieved and sustained. Consultations have been held with a range of stakeholders, based on a discussion paper issued by the Department but views were wide and varied.⁶

4.11 The evidence before the Committee suggests that the industry and telecommunications consumer organisations would be anxious to participate in such a process and to offer suggestions as to what should be included in the “prescribed criteria”.

4.12 In its submission to both the current and the previous inquiry into the full privatisation of Telstra, ATUG has argued that performance criteria for carriers must be set out in legislation. In ATUG’s view, all carriers (not just Telstra) need to meet required performance criteria and it suggests that “a broad framework or broad areas of consideration” should be set out in the legislation to guide the development of the regulations proposed in the Bill. ATUG also called for an amendment to Schedule 3, part 1, Section 2(10) of the *Telstra (Transition to Full Private Ownership) Bill 1998* mentioning some specific prescribed criteria which it believed should be in the legislation, including support services such as time to connect a new service, time to

6 *Telstra (Transition to Full Private Ownership) Bill 1998*, Explanatory Memorandum, p.10

restore a faulty service, time to answer a call to customer inquiry service, time to dial tone, post dialling delay, congestion and drop out.⁷

4.13 ATUG's preference would be for the "prescribed criteria" to be set not simply in the context of a pre-sale inquiry but in the context of continuing assessment of customer service linked to the carriers' licence conditions, as is currently the case in the United States:

It is about moving on to ensure that all carriers provide network performance, service performance, at some defined standards and not have low quality services marketed as high quality services; that is, not to have consumers hoodwinked by undefined and underperforming services.⁸

4.14 The National Farmers' Federation, Mr Needham also argued in relation to access to a 64 kilobits service that unless certain levels of service are specified in legislation, "there is no result."⁹

4.15 The Committee is of the opinion that it would be premature to reach a view on the prescribed criteria and that the government should take into consideration the consultations undertaken on this matter.

Recommendation 5

The Committee recommends that the government undertake ongoing consultations with appropriate groups regarding the development of the 'prescribed criteria'.

Designated period

4.16 The Explanatory Memorandum to the Bill describes the meaning of "designated period" for the purpose of the inquiry before full privatisation can proceed. A minimum "designated" period of 6 months is prescribed:

Subitem 2(9) provides that for the purpose of item 2, a 'designated period' is each of one or more specified periods, or each period in a specified series of periods, of at least 6 months specified in the regulations. A designated period will be able to begin before or after Royal Assent.¹⁰

7 Submission no. 5 pp. 2 & 4 (ATUG)

8 Mr Horsley, Evidence, p. 5

9 Mr Needham, Evidence, p 31

10 *Telstra (Transition to Full Private Ownership) Bill 1998*, Explanatory Memorandum, p.45

4.17 The Committee notes that the representative of the Government of Western Australia, although not opposed to the sale of Telstra, made a plea for the designated period to be longer than a minimum of 6 months:

The six months mooted in the bill as a period under which a measured service performance would be a criterion for the government relinquishing majority ownership would not be acceptable. A period of over 12 months is considered the absolute minimum...an absolute minimum of 12 months in order to provide for a complete annual cycle, not only of the business cycle but of the weather cycle. There is a big difference in the difficulty in executing repairs or providing new services in the wet weather compared to the dry, for example. It is also in a short period of time of six months possible for a special effort to be put in, after which that special effort then collapses because all the resources have been focussed into that six-month period. It is just not long enough to measure the likely sustainable performance.¹¹

Minister's power to direct Telstra

4.18 At present the Minister has a broad power to direct Telstra (*Telstra Corporation Act 1991*, section 9). The bills provide that this power will lapse when public ownership of Telstra falls below 50 per cent. The power has never been used, and the government thinks that it is insufficiently targeted or defined and is inappropriate in relation to a privately owned company. Instead, the *T(CPSS) Bill 1998* gives the Minister a power to direct Telstra to comply with the bill. Breaching such a direction could incur a fine of up to \$10 million.¹²

4.19 Witnesses who favoured keeping the broader power to direct argued that the power acts as a brake on Telstra even if it is never formally used:

To look at a pattern of ministerial non-intervention over a period of time I do not think is actually a valid argument for selling off those remaining shares. The ministerial pressure acts in a very subtle way. If we look at some of the other policy issues over the past 18 months or two years, such as 013 directory service charging, price caps and a whole range of areas, the minister and his office have kept a close eye on developments and I am sure the minister has actually sent messages through to Telstra to behave in a certain way. You do not actually see overt ministerial intervention, but the inclination is still there for the minister to act when there is a retention of public ownership.¹³

11 Mr Skelton, Evidence, p.62

12 Minchin the Hon N., *Telstra (Transition to Full Private Ownership) Bill 1998* - second reading speech, Senate *Hansard*, 30 November 1998, p.610. *T(CPSS) Bill 1998 - Explanatory Memorandum*, p. 9,114

13 S. Horrocks (Consumers' Telecommunications Network), Evidence 3 February 1999, p. 39. Similarly Submission No. 19 (Communications, Electrical and Plumbing Union), p. 15

4.20 While Telstra argued that ‘hybrid ownership’ creates a regrettable conflict of interest between government as regulator and government as owner, the Communications, Electrical and Plumbing Union claimed that such arguments are rarely, if ever, accompanied by concrete examples of how such conflict has produced unsatisfactory outcomes.¹⁴

4.21 In the Committee’s view, the matter of principle is that the current power to direct is inappropriate in the case of a privately owned company. It is also unnecessary in practice providing that the general regulatory scheme is powerful enough. The Committee is satisfied (particularly considering the improvements contained in these bills) that the general regulatory scheme is powerful enough.

Conclusion

4.22 It is difficult to estimate the exact effect on Commonwealth revenues from the sale of the remaining two thirds of Telstra because of the many variables that need to be assessed. However the Committee is satisfied that the government’s commitment to use the proceeds of the sale for the purpose of retiring public debt will ensure that the beneficial impact of the sale will be felt through all areas of the Australian economy and benefit all Australians.

Recommendation 5

The Committee reports to the Senate that it has considered the *Telstra (Transition to Full Private Ownership) Bill 1998*, the *Telecommunications (Consumer Protection and Service Standards) Bill 1998*, the *Telecommunications Legislation Amendment Bill 1998*, the *Telecommunications (Universal Service Levy) Amendment Bill 1998* and the *NRS Levy Imposition Amendment Bill 1998* and recommends that the Bills proceed.

Senator Alan Eggleston

Chair

14 Submission No. 21 (Telstra), p. 6; Submission No. 19 (Communications, Electrical and Plumbing Union), p. 15